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No. 04-1186

IN THE
Supreme Court of the United States

WACHOVIA BANK, N.A.,

Petitioner,

v.

DANIEL G. SCHMIDT III, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF OF AMERICAN BANKERS ASSOCIATION AS AMICUS CURIAE SUPPORTING PETITIONER WACHOVIA BANK, N.A.

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QUESTIONS PRESENTED

The questions presented are (i) whether, for purposes of federal diversity jurisdiction, a national banking association is "located" in, and thus deemed to be a citizen of, every state in which the association maintains a branch, as held by the court below, or instead has a more limited citizenship, as held by three other courts of appeals; and (ii) whether the word "located," as used in 28 U.S.C. §1348, is ambiguous.

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[1] Pursuant to Rule 37.6, counsel certifies that no counsel for any party authored this brief in whole or in part, and no person or entity, other than ABA and its members, made a monetary contribution to the preparation or submission of the brief.

With the written consent of the parties, originals of which have been filed with the Clerk, the American Bankers Association hereby respectfully submits this brief as amicus curiae.

INTEREST OF THE AMICUS CURIAE

The American Bankers Association ("ABA") is the principal national trade association of banks throughout the United States. It has members in each of the fifty states and the District of Columbia and includes financial institutions of all sizes and types – money center, regional, community, commercial and savings banks. ABA's members hold approximately 90% of the domestic assets of the banking industry in the United States. The ABA frequently appears in litigation as either a party or as *amicus curiae* where the issues raised in a case are of widespread importance and concern to the industry.

The resolution of the legal question of where a national bank is "located" for the purposes of federal diversity jurisdiction, *see* 28 U.S.C. § 1348, will affect one of the most fundamental rights accorded to citizens of the United States: access to federal courts in cases involving disputes between citizens of different states. The present case has direct applicability to the members of ABA.

ABA respectfully submits that the court's understanding and analysis of the issues in this case will benefit from a submission by this amicus, as it is in a position to present to the Court a comprehensive assessment of how an adverse decision will place national banks at a decided disadvantage in comparison to state-chartered institutions with respect to access to federal courts, and the potential disruption that will result if the lower court's opinion is upheld.

STATEMENT OF THE CASE

For more than a century, the settled rule has been that federally chartered banks should have the same access to federal courts as state chartered banks. Since 1882, the United States Congress has, through various enactments, consistently adopted legislation that expressly adheres to the basic notion that national banks and state-chartered institutions shall be on an equal footing with respect to access to federal courts, and that district court jurisdiction over lawsuits involving national banks "shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States...." *Act of July 12, 1882*, 22 Stat. 162, 163.

Under the lower court's decision, national banks' opportunities for access to federal courts will effectively be destroyed in the majority of cases because, unlike their state-chartered counterparts, they are deemed to be citizens of every state in which they have a branch. This flawed construction of 28 U.S.C. § 1348 will mean that state banks can bring or remove to federal court the numerous matters involving their retail banking customers in all states (except in their "home" state which hosts their main office) where they have branches[2] and, therefore where they have the customers, while similarly-situated national banks will be compelled to litigate in state court the myriad of issues that do not present federal questions – including state-law restrictions on national banks that give rise to federal

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[2] *See* 28 U.S.C. § 1332(c)(1) ("a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business...").

preemption defenses.[3] Instead of maintaining parity between national banks and state banks – or other corporate entities, for that matter – the lower court's decision singles out national banks for disparate treatment.

The decision below will also have a significant impact upon pending litigation within the federal system, at both the trial and appellate levels. If the Court were to adopt the lower court's restrictive interpretation regarding the corporate citizenship of national banks, the result will force the remand or dismissal of scores of existing cases, many ripe for decision, where the parties have invested years of time and treasure litigating in a federal forum. Indeed, the history of this case amply demonstrates the potential for disruption latent in the lower court's decision.

The Court should reverse the lower court's decision and restore what has been the longstanding operative rule with respect to federal court jurisdiction for the nation's banking institutions: equality between state and federal charters.

A. Interstate Branch Banking Is A Recent Phenomenon For National Banks.

Banking and the way in which banking products and services are made available to the public have changed enormously in the last 20 years. The advent of advanced technology and the evolution of the nation's banking laws have produced a revolution in the way in which the American public conducts its banking. One hundred years ago, most banks conducted their business from their main

[3] *But see*, *Beneficial National Bank v. Anderson*, 539 U.S. 1 (2003)

office, meaning that if a customer wanted to make a deposit, cash a check, or obtain a loan, their choices were limited to an institution that was physically located nearby. At that time, a bank offering the convenience of multiple offices or "branches" was almost unheard of, and the ability to conduct banking business on virtually any street corner in any major city via an ATM would have been considered a flight of fancy.

At the end of the nineteenth century, only 5 national banks and 82 state-chartered banks operated branches, with a total of 119 branches. By the end of 1923, however, there were 91 national and 580 state banks with a total of 2,054 branches. *First National Bank v. Walker Bank*, 385 U.S. 252, 257 (1966), *citing* Board of Governors of the Federal Reserve System, Banking Studies 15, 428 (1941). As state laws were liberalized to permit branching, the number of bank branch offices steadily began to climb. Despite years of steady growth, however, the number of branch offices did not outstrip the number of main offices until the mid-1960s.[4] Today, the number of branch offices in the United States *far* exceeds the number of main banking offices.[5] According to the Federal Deposit Insurance Corporation ("FDIC"), as of December 31, 2004, there were 76,579

[4] FDIC Statistics on Banking: *A Statistical Profile of the United States Banking Industry,* December 31, 2004, at A-2.

[5] *Id.* According to the FDIC, the number of bank "main offices" has declined since the 1930's, dropping from 14,146 in 1934 to 7,630 as of December 31, 2004.

banking offices of all types in the United States.[6] Of this number, 68,949 were classified as branch offices.[7]

The ability of banks to expand their operations beyond their home office and establish branches was an innovation pioneered by state banks. State laws were amended to permit state-chartered institutions to move beyond the "unit banking" model and to expand their operations by opening branches within their home state. Congress, however, for decades did not see fit to grant national banks comparable authority and the ability of national banks to compete with their state chartered counterparts suffered as a result. Indeed, intrastate branching proved so successful at the state level that by the mid-1920's it was believed that intrastate branching by state chartered institutions posed a threat to the continued viability of the national banking system. The Comptroller of the Currency, in his *Annual Report of 1923*, recommended congressional action on branch banking. The report stated that if state banks continue to engage "in unlimited branch banking it will mean the eventual destruction of the national banking system . . . ." H. R. Doc. No. 90, 68th Cong., 1st Sess., 6 (1924).

Congress reacted to this threat in 1927 when it passed the *McFadden Act*, 44 Stat. 1224 (1927). The *McFadden Act*, in general terms, authorized national banks (and state banks which were members of the Federal Reserve System) to branch in municipalities where state banks were permitted to branch under state law. *Walker Bank*, 385 U.S. at 258. The *McFadden Act* was

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[6] *Id.*

[7] *Id.*

subsequently amended by the *Banking Act of 1933 (Glass-Steagall Act)*, 48 Stat. 189, 190 (1933), which brought the state and national charter into near complete alignment regarding the authority to establish branches within a bank's home state. The *Banking Act of 1933* permitted national banks to establish intrastate branches on the same terms as state banks under state law. *See Walker Bank*, 385 U.S. at 260. But because no state allowed branching outside of its home state, the *McFadden Act* effectively imposed the same restriction on national banks.

The power to operate branches across state lines, *i.e.*, interstate branching, remained beyond the authority of national banks for the next sixty years. Indeed, prior to the passage of the *Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994*,[8] Congress had actively sought to address attempts to evade the limitations of the *McFadden Act* and state branching laws by bank holding companies. Congress passed the *Bank Holding Company Act of 1956*, 70 Stat. 133, as amended, 12 U.S.C. 1841 et seq., which contained a provision known as the *Douglas Amendment*, 12 U.S.C. 1842(d), which prohibited the Board of Governors of the Federal Reserve from approving an application of a bank holding company or bank located in one State to acquire a bank located in another State unless the acquisition was specifically authorized by the laws of the State in which such bank was located. From 1956 to 1972, the *Douglas Amendment* had the effect of completely barring interstate bank acquisitions because no State had enacted the requisite authorizing statutes. These

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[8] Pub. L. No. 103-328, Title I, 108 Stat. 2338, 2349, 2352, which relaxed prior barriers to interstate branching by both national and state banks (amending, *inter alia*, 12 U.S.C. §§ 36 & 1842(d)).

restrictions were upheld in the Court's 1985 decision in *Northeast Bancorp v. Board of Governors*, 72 U.S. 159 (1985), which held that States could establish and enforce regional interstate banking compacts that controlled branching within their borders.[9]

Authority for truly significant interstate branching did not arrive for national banks until 1994, with the passage of the *Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994*. The statute repealed the *Douglas Amendment* and the *McFadden Act* and opened the door for national banks to operate branches in numerous states after June 1, 1997. The number of branches currently operated by national banks represents a very significant portion of the total banking offices and branches within the United States. According to the Federal Deposit Insurance Corporation, as of December 31, 2004, there were 1,906 national banks operating 36,813 branches within the 50 States and the District of Columbia.[10] The ten largest national banks in the United States (based on asset size) now operate a total of 20,031 branches. As a group, on average they have established a presence in over 15 different jurisdictions.[11] Bank of America, has offices

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[9] It was also not uncommon during this period for a bank holding company to expand its name and operations beyond its "home" state by chartering individual de novo banks in each jurisdiction. These institutions are not branches, they are separate banking charters.

[10] *Id.*, at B-16.

[11] *See* Appendix A. Federal Deposit Insurance Corporation (FDIC), *Institution Directory*, http://www2.fdic.gov/idasp/main.asp.

located within 30 jurisdictions across the United States, while the petitioner in this case, Wachovia Bank, NA, operates 3,331 branches located in 16 different jurisdictions. One should not assume, however, that interstate branching is the exclusive province of larger institutions. For example, on a much smaller scale, the Adams National Bank (total assets, $246 million, total offices: 7), whose main office is located in Washington, DC, has established an interstate branch in Maryland.[12]

B. Congress Established Jurisdictional Parity Between State Chartered Institutions And National Banks.

Turning to 28 U.S.C. § 1348 as it affects the grant of federal court jurisdiction for cases involving national banks – one point quickly becomes apparent: until the passage of *Riegle-Neal* in 1994, the law governing the "citizenship" of national banks for purposes of establishing diversity jurisdiction evolved at a time when national banks either lacked the authority to branch at all, or branching was limited to an expansion within the state that hosted the institution's main office. With one or two isolated exceptions, interstate branching simply did not exist for national banks, and the question of whether the existence of branch offices were to be taken into consideration for the purpose of determining the "location" of a national bank under 28 U.S.C. § 1348 and its predecessors when divining an institution's "citizenship" for establishing diversity jurisdiction under 28 U.S.C. § 1332 rarely was an issue.

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[12] Federal Deposit Insurance Corporation (FDIC), *Institution Directory* (as of March 31, 2005) (www2.fdic.gov/idasp/ez_find_summary_office.asp?cert=22658&Refer=).

However, as will be discussed below, it is equally apparent that while interstate branching was not a factor in drafting the language used in the historical predecessors to 28 U.S.C. § 1348, Congress during this period was operating from the basic position that legislation such as the *McFadden Act* and the *Banking Act of 1933,* which opened up limited branching for national banks, was "intended to place national and state banks on a basis of "competitive equality" insofar as branch banking was concerned." *Walker Bank*, 385 U.S. at 261. The cases interpreting the historical predecessors to 28 U.S.C. § 1348 all reflect that this basic notion of parity included equal access to federal courts. Indeed, the jurisprudence includes a case, *American Surety Co. v. Bank of California*, 133 F.2d 160, 162 (9th Cir. 1943), that presented a rare pre-*Riegle-Neal* situation where a national bank with an interstate branch was sued in federal court. In that case, diversity jurisdiction was upheld despite the fact that the bank had a branch in the same state as the plaintiff.

More recent cases – *Horton v. Bank One, N.A.*, 387 F.3d 426 (5th Cir. 2004) and *Firstar Bank, N.A. v. Faul*, 253 F.3d 982, 986 (7th Cir. 2001) – have continued to understand that maintaining parity between national and state bank charters has always been a congressional purpose behind 28 U.S.C. § 1348 as well as predecessor statutes. This interpretation is also in accord with the interpretation of the statute that has been adopted by the federal agency that charters and regulates national banks – the Office of the Comptroller of the Currency. *See OCC Interpretive Letter No. 952* (2002 WL 32072482, October 23, 2002).

C. The Historical Interpretation Of The Statute Emphasizes Parity Between National And State Charters.

Federal diversity jurisdiction was created by Congress to "provide a federal forum for important disputes where state courts might favor, or be perceived as favoring, home-state litigants." *Exxon Mobil Corp. v. Allapattah Services, Inc.* 125 S. Ct. 2611, 2618 (2005). Given their federal origin and the hostility that was shown to national banks within the States, Congress extended the jurisdiction of the federal courts to include *all* suits involving these institutions when it created the national charter in 1863. *See Act of Feb. 25, 1863*, 12 Stat. 665, 681. "For the first couple [of] decades of their existence, any suit involving a national bank could be brought in or removed to federal court since national banks are creatures of federal law and thus any suit by or against them was a suit arising under federal law." *Firstar Bank*, 253 F.3d at 986, citing *Petri v. Commercial Nat'l Bank of Chicago*, 142 U.S. 644, 648 (1892); *Horton*, 387 F.3d at 430 (same).

In 1882, Congress eliminated automatic federal question jurisdiction over all disputes involving national banks. *See Leather Mfrs.' Nat'l Bank v. Cooper*, 120 U.S. 778, 780-81 (1887). In doing so, however, it acknowledged the general principal that national banks should not be put at a disadvantage with respect to state banks in terms of access to the federal courts. Congress expressly provided that jurisdiction over lawsuits involving national banks "shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States...." *Act of July 12, 1882*, 22 Stat. 162, 163. The Court promptly construed this 1882 amendment to place "national banks on the same footing as the banks of the state where they were located

for all the purposes of the jurisdiction of the courts of the United States." *Leather Mfrs.' Nat'l Bank*, 120 U.S. at 780; *see also Petri*, 142 U.S. at 649 (observing that 1882 amendment "placed [national banks] in the same category with banks not organized under the laws of the United States"); *Firstar Bank*, 253 F.3d at 986; *Horton*, 387 F.3d at 430.

In 1887, Congress again revised the jurisdictional statute, introducing the language at issue in this case. *See Act of Mar. 3, 1887,* 24 Stat. 552, 554 (providing that "all national banking associations ... shall ... be deemed citizens of the States in which they are respectively located"). When interpreting this statutory revision, this Court again recognized the clear intent of Congress that national banks be accorded equal access to the federal courts. *See Petri*, 142 U.S. at 650-51 ("No reason is perceived why it should be held that congress intended that national banks should not resort to federal tribunals as other corporations and individual citizens might."); *Horton*, 387 F.3d at 432-33; *Fin. Software Sys., Inc. v. First Union Nat'l Bank*, 84 F. Supp. 2d 594, 600 (E.D. Pa. 1999) (recognizing that the 1887 Act changed the structure of the 1882 enactment, but it "did not change the purpose"). Indeed, the 1887 Act expressly stated that Congress intended to put national banks on at least as good a footing as individuals and state-chartered institutions with respect to access to federal courts: "[I]n such cases [involving national banks,] the circuit and district courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same State." *Act of Mar. 3, 1887*, 24 Stat. 552, 554-55.

In 1911, Congress dropped the language just quoted and adopted language nearly identical to the current section 1348: "[A]ll national banking associations established

under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located." *Act of Mar. 3, 1911*, 36 Stat. 1087, 1092-93. Given the fact that virtually all national banks – like state banks – had offices in only a single state, which meant that national banks were "located" only where they had their main office.

However, there *were* a few exceptions to this general rule, and one of those exceptions, the Bank of California, had branches in Oregon in addition to its main office in California. In a diversity action brought against the bank in Oregon, the United States Court of Appeals for the Ninth Circuit affirmed the district court's conclusion that:

> [a] logical interpretation of the phraseology of [the 1911 Act language] leads to the conclusion that the 'States in which they (national banking associations) are respectively located' are those states in which their principal places of business are maintained. If the Congress had intended to provide that a national banking institution be given the privilege and should carry the duties of citizenship in various states upon the basis of branch business offices being established therein, it would be a noteworthy departure from the general rule, and more likely than not Congress would have plainly state[d] such intent.

American Surety Co. v. Bank of California, 133 F.2d 160, 162 (9th Cir. 1943). Congress subsequently responded to this authoritative judicial construction of the "located"

language – and judicial prompting for a "plain statement" from Congress if the rule was intended to be otherwise – when it re-codified the statute five years later, in 1948.

The 1948 re-codification resulted in the current statute, 28 U.S.C. § 1348. Significantly, the 1948 re-codification resulted in no substantive change to the statute. Congress chose to leave intact the provision of the statute relied upon by the Ninth Circuit in *American Surety* when it deemed national banks to be "citizens of the States in which they are respectively located" – *i.e.*, the state of their principal place of business. And when Congress amended the *National Bank Act* in 1994 to take up the issue of interstate branching for national banks in *Riegle-Neal,* it once again left in place the statutory language of section 1348.

SUMMARY OF THE ARGUMENT

The Court should overturn the lower court's decision and reject its interpretation of 28 U.S.C. § 1348 because it is inconsistent with over 100 years of congressional and judicial construction of that provision and its historical predecessors. When Congress recodified the statute in 1948, it did so against the backdrop of settled historical interpretation of the statute which had (at the time) been recently confirmed by the United States Court of Appeals for the Ninth Circuit in the *American Surety*. The operative understanding recodified by Congress in 1948 was that the statute and its predecessors were intended to place national banks in the *same* position regarding federal jurisdiction as all other corporations. *Petri*, 142 U.S. at 650-51; *Leather Mfrs.' National Bank*, 120 U.S. at 780.

The fact that the lower court's decision will have a negative adverse impact upon the ability of national banks to litigate or remove cases to federal court is easily

demonstrated. If one were to compare Wachovia Bank's current level of access to federal district court under the lower court's restrictive construction of the statute versus its access if it were a state-chartered institution, the disparity become apparent: as a national bank, Wachovia Bank could establish federal diversity jurisdiction in only 35 of the 51 potential domestic jurisdictions. By contrast, if Wachovia Bank were a state-chartered institution, it could establish federal diversity with respect to citizens located in 49 or 50 of the 51 potential domestic jurisdictions.

Finally, the Court should also conclude that the lower court's decision, if upheld, will likely have a significant impact upon cases already pending within the federal courts, at both the trial and appellate levels. As discussed below, the ABA is aware of a number of cases involving national banks that have been dismissed or remanded as a result of the ruling in this case. If the Fourth Circuit's rule interpretation of 28 U.S.C. § 1348 were adopted by the Court as correct, it will force the remand or dismissal of scores of existing cases, many fully briefed and ripe for decision, where the parties have invested years of time and treasure litigating in a federal forum.

ARGUMENT

A. The Court Should Interpret The Statute Consistent With The Settled Congressional And Judicial Construction.

As the short historical recitation demonstrates, section 1348 is a statute that exists against a backdrop of over 100 years of settled congressional and judicial construction. A statute's longstanding meaning forms the

background against which Congress legislates when it amends the law. Courts presume that Congress will use clear language if it intends to alter an established understanding about what a law means; if Congress fails to do so, courts presume that the new statute has the same effect as the older version. *Firstar Bank*, 253 F.3d at 988, *citing Cottage Savings Association v. Commissioner*, 499 U.S. 554, 562 (1991). Moreover, if a phrase or section of a law is clarified through judicial construction, and the law is amended, but retains that same phrase or section, then Congress presumably intended for the language in the new law to have the same meaning as the old. *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998); *Lorillard v. Pons*, 434 U.S. 575, 581 (1978); *Firstar Bank*, 253 F.3d at 988.

Applying these interpretive principles here, the Court should conclude two things. First, when Congress re-codified section 1348 in 1948 it did so in a context where the interpretation of the statute was in fact settled – an interpretation had (at the time) been recently confirmed by the United States Court of Appeals in the *American Surety*. The understanding adopted by Congress in 1948 was this: the 1882 amendments to the *National Bank Act*, as carried over in the 1887 and 1911 Acts, placed national banks in the *same* position regarding federal jurisdiction as all other corporations. *Petri*, 142 U.S. at 650-51; *Leather Mfrs.' National Bank*, 120 U.S. at 780. *See Mercantile National Bank v. Langdeau*, 371 U.S. 555, 565-66 (1963) ("Section 4 [of the 1882 and 1887 amendments] apparently sought to limit, with exceptions, the access of national banks to, and their suability in, the federal courts to the same extent to which non-national banks are so limited."). Second, the Court should conclude that when Congress once again declined to amend the language of 28 U.S.C. § 1348 when it loosened the restrictions on interstate branching for national banks in 1994 with the enactment of

Riegle-Neal, its intention was to once again preserve the longstanding parity between state and national banks with respect to access to federal courts.

B. The Lower Court's Interpretation Does Not Put National Banks On An Equal Footing With State Chartered Institutions.

The Court should reject the lower court's interpretation of 28 U.S.C. § 1348 for the fundamental reason that it fails to carry out the intention of Congress. That is, it utterly fails to preserve the parity between national banks and state-chartered institutions with regard to access to federal courts that Congress has sought to foster and protect for over 100 years.

This point is easily demonstrated by comparing the petitioner's, Wachovia Bank's, current level of access to federal district court under the lower court's restrictive construction of the statute versus its access if it were a state-chartered institution. Under the lower court's interpretation of 28 U.S.C. § 1348, Wachovia Bank would be deemed to be a "citizen" of the state where its main office is located and where it has established a branch. Wachovia Bank, N.A., currently has 3,331 branches or offices located in 16 different states (including the District of Columbia). (See Appendix A). Thus, under the lower court's decision, Wachovia Bank could establish federal diversity jurisdiction under 28 U.S.C. § 1332 in only 35 of the 51 potential domestic jurisdictions.

By contrast, if Wachovia Bank were a state-chartered institution, it would fare much better under the lower court's ruling. Diversity jurisdiction would be governed by 28 U.S.C. § 1332(c)(1). For the purposes of establishing the citizenship of a corporation, section

1332(c)(1) provides that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the state where it has its principal place of business... ." Thus, if one were to change Wachovia's status from a national bank to a state chartered institution, it could establish federal diversity jurisdiction with respect to citizens located in 49 or 50 of the 51 potential domestic jurisdictions. As recognized by the Fifth Circuit in *Horton*, this easily-demonstrated disparity "would lead to a narrow concept of 'parity'" between national and state charters with respect to access to federal courts. 387 F.3d at 433.

C. The Lower Court's Decision Would Likely Have A Significant Impact Upon Pending Litigation Within The Federal System.

The Court may also conclude that the lower court's decision, if upheld, will likely have a significant impact upon cases already pending within the federal courts, at both the trial and appellate levels. As discussed below, the ABA is aware of a number of cases involving national banks being dismissed or remanded as a result of the Fourth Circuit's construction of 28 U.S.C. § 1348. If the Fourth Circuit's rule were adopted by the Court as correct, one may reasonably expect that a significant numbers of cases – some pending for years – will either be dismissed or remanded to state forums for lack of federal jurisdiction.

Unfortunately, there appear to be no readily-available statistics regarding the number of diversity cases currently pending within the federal system that involve national banks. What is known, however, is that national banks do frequently appear as litigants in federal court. A

search of the U.S. Party/Case Index available on PACER[13] gives some indication of the number of cases under discussion. For example, a search of the term "Wachovia Bank" reveals that between January 1 and August 1, 2005, "Wachovia Bank" appeared as a party in 100 new civil cases and 11 new appeals that were filed during that period with the various United States District Courts and federal Courts of Appeal. A broader search discloses that since January 1, 2000, "Wachovia Bank" has appeared as a party in 105 discrete appellate matters and 575 civil matters pending in District Court.

While Wachovia Bank is a large institution, given the fact that there are presently over 1,900 national banks of all sizes within the United States, the Court may readily grasp the total numbers of cases within the federal court system that involve national banks – including cases based on federal diversity jurisdiction – that may be affected by a ruling in this case. Indeed, the history of this particular case[14] and the reaction to the lower court's decision within

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[13] The U.S. Party/Case Index is a national locator index for PACER systems that tracks activity in the United States appellate, district and bankruptcy courts. The information that is provided includes the party name, the court where the case is filed, the case number and the filing date.

[14] It is worth noting that the present matter was originally filed with the United States District Court for the District of South Carolina in June of 2003, and that the jurisdictional issue presently before the Court was raised for the first time on appeal. *Schmidt*, 388 F.3d at 415. Similarly, the docket for *National Union Fire v. Allfirst Bank, et al.*, Case No. 03-2276 (4th Cir., January 28, 2005), reflects that First Union National Bank was dismissed from the case as a "dispensable non-diverse party" on the eve of oral argument. The case

the Fourth Circuit amply demonstrate this latter point. Since the Fourth Circuit issued its decision in November of 2004, the ABA has become aware of a number of additional cases that have either been dismissed or remanded to state court in conformance with the lower court's ruling. *See Coots v. Wachovia Bank, N.A.*, 114 Fed.Appx. 586, 2004 U.S. App. LEXIS 25554 (4th Cir. 2004) (judgment of district court vacated and case remanded for a determination of whether there is diversity jurisdiction in light of the rule enunciated in *Wachovia v. Schmidt*); *National Union Fire v. Allfirst Bank, et al.*, Case No. 03-2276 (4th Cir., January 28, 2005)(Order dismissing First Union National Bank as a "dispensable non-diverse party" in order to preserve diversity jurisdiction in light of ruling in *Wachovia v. Schmidt*); *Halifax Corp. v. Wachovia Bank, N.A.*, 2005 WL 1799507 (E.D. Va., July 21, 2005)(dismissal granted, citing *Wachovia v. Schmidt*); *Wachovia Bank, N.A. v. Ranson*, 2005 WL 555587 (W.D.Va., Feb 28, 2005) (same); *Friel Prosthetics, Inc. v. Bank of America*, 2005 WL 348263 (D. Md., Feb 09, 2005)(removal from state court deemed improper because of lack of diversity jurisdiction, citing *Wachovia v. Schmidt*, and matter remanded back to state court).

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was originally filed in the United States District Court for the District of Maryland May, 2002. The appeal was docketed at the United State Court of Appeals for the Fourth Circuit in October, 2003. The parties were ordered *sua sponte* in January of 2005 to submit supplemental briefs on the impact of the Fourth Circuit's ruling in *Schmidt*. First Union National Bank was dismissed from the case by order dated January 28, 2005.

In sum, the ABA respectfully submits that an adverse ruling in this case will not only artificially limit the filing or removal of *new* matters involving national banks in federal court, it will also potentially force the remand or dismissal of scores of existing cases, many fully briefed and ripe for decision, where the parties have invested years of time and treasure litigating in a federal forum.

CONCLUSION

For the foregoing reasons, as well as for those set forth in the brief of Petitioner, the Court should reverse the decision.

Respectfully submitted,

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Appendix A

Number of Branches/Offices Operated by the Ten Largest National Banks (as Determined by Asset Size)

Institution	Number of Domestic Branches/Offices	Number of States (Inc. District of Columbia)
JPMorgan Chase Bank, NA	2,575	18
Bank of America, NA	5,958	30
Citibank, NA	287	1
Wachovia Bank, NA	3,331	16
Wells Fargo Bank, NA	3,149	24
U.S. Bank, NA	2,492	25
HSBC Bank USA, NA	429	9
Chase Bank USA, NA	3	1
Keybank, NA	961	13
PNC Bank, NA	846	10

Source: Federal Deposit Insurance Corporation (FDIC), *Institution Directory* (as of August 12, 2005), http://www2.fdic.gov/idasp/main.asp.